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May 2, 2006

The Honorable Gino J. Agnello
Clerk, United States Court of Appeals
for the Seventh Circuit
219 S. Dearborn Street
Suite 2722
Chicago, IL 60604

Re: *United States v. Thomas Walker*,
No. 05-1812
Supplemental Authority

Dear Mr. Agnello:

Oral argument was held in this case on October 24, 2005.

This letter is submitted pursuant to Rule 28(j), Fed. R. App. P.

This letter relates to the argument set forth at page 19, second paragraph of Appellee United States of America's brief that the notice requirement in Rule 32(h), Fed. R. Crim. P., does not apply to post-*Booker* variances. The government withdraws its argument. Undersigned counsel has recently been made aware that the argument is contrary to Department of Justice policy. That policy provides that although Rule 32(h) does not literally apply to the district court's discretion to sentence defendants post-*Booker*, due process concerns may still require a district court to provide notice and opportunity to be heard on any contemplated departure or imposition of a non-Guideline sentence.

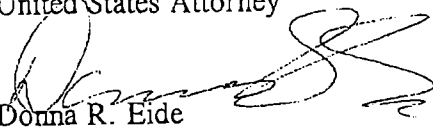
The government asserts, nonetheless, that the error in this case was harmless beyond a reasonable doubt. The defendant did not dispute the facts presented by the government at sentencing upon which the court relied to increase the sentence, the facts relied on related to the crimes to which the defendant pleaded guilty, and the defendant had notice of the statutory maximum sentence that could be imposed in the case.

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I certify that the body of this letter has 222 words.

Respectfully submitted,

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